had paid the share they would all have been liable to a suit by the defendants. By arranging for the money in dispute to be paid to the defendants the plaintiff was left to claim against them and the remaining partners were not concerned with what happened. As Tan Chor Hock, one of the partners, said: "As long as I did not have to pay, I did not care who got it," I think therefore that having failed to get the partners to pay him the disputed share there and then, the plaintiff reluctantly agreed to the share being paid to the defendants, but with every intention of pursuing his claim against them. I do not for a moment think that he intended to release his claim and I cannot find that there was any consideration moving from the defendants to support such a release. A waiver, not under seal, can in any case only be effective if there was an intention to waive (see *Alkaff & Co.* v. *The Governor-in-Council*, (1937) S.S.L.R. p. 201; 6 M.L.J. p. 211), and I am satisfied that there was no such intention. The plaintiff in fact lost no time in putting forward his claim, and instructed solicitors to write in connection with such claim the very next day the 8th February 1937. It is true that this letter and the subsequent letter of the 18th February were written to Kang Swi and not to the defendants, but Kang Swi has given evidence that after the receipt of the 2nd letter he informed L. A. Chitty on the telephone. If, therefore, as L. A. Chitty has said, he distributed the assets among the beneficiaries on the 2nd April 1937, he did so with notice of the plaintiff's claim and at his own peril, and no question of estoppel arises.

I have considered the cases such as *In re Hodgson, Beckett* v. *Ramsdale*, 31 Ch. D. p. 177 at p. 183, which suggest that a claim against a dead man's estate should be carefully scrutinized and generally requires corroboration. I do not however think that those authorities have much bearing on the present case, first because the plaintiff's claim is in fact corroborated, and secondly because the defendants' liability arises not so much from any promise made by Kok Teng during his life as from the legal consequences of the defendants' election to retain his share in the partnership after his death.

In my opinion, therefore, the plaintiff is entitled to judgment for the amount claimed and costs.

Judgment accordingly.

Solicitors for the plaintiff—*Braddell Bros.*

Solicitors for the defendant—

Allen & Gledhill.

[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

August 22, 1938.

G. D. GOULD v. DOBB & COMPANY LTD.

[SINGAPORE SUIT No. 160 of 1938]

Master and servant—Termination of service —Length of notice—Libel—Privileged statement.

The plaintiff was a civil engineer who was employed by the defendant-company to supervise certain structural works which the defendant-company were executing as contractors. The contract was an indefinite contract of employment.

Held, that the plaintiff was entitled to reasonable notice and that having regard to the plaintiff's professional standing and the nature of the work he was doing he was entitled to three months' notice.

The plaintiff also claimed against the defendant-company for damages for libel contained in a letter written by the defendant-company to the plaintiff's solicitors in reply to a demand by them for payment of salary to the plaintiff as a dismissed servant.

Held, that it would be a restriction on the ordinary and necessary right of free expression of opinion if the Court were to hold that the defendant-company's statement of its reasons for dismissing the plaintiff was in the circumstances irrelevant or wholly unconnected with the subject matter of the enquiry and that the occasion was privileged.

TRIAL OF ACTION.

Tampoe Phillips for plaintiff.

Seth for defendant-company.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

HORNE, J.—I propose first to deal with the question of reasonable notice for the termination of the employment, and that in turn depends upon whether the plaintiff was at the time of his dismissal generally in the employment of the defendant company as an engineer. If he was not then the question of notice does not arise because the plaintiff has admitted that the notice would be sufficient in these words "I am not suggesting that I received insufficient notice in respect of the Plotting Room contract, that and other work had all merged into the one thing .....when I was instructed to start the Recreation Ground and Road Contract."

The Plotting Room Contract was expected to end about X'mas 1937 and apart from the installation of machinery which has not yet been installed, the construction work was completed in February 1938. At the end of June Mr. Dobb, the managing director of the defendant company, went to England and returned at the end of September. During this time the plaintiff discussed his prospects with the acting Managing Director Mr. Brucker, but received no promise of future employment from him. Nevertheless

at Mr. Brucker's request the plaintiff did other work; viz: a small job of two Sewage Disposal Tanks and working out quantities for a Dam contract which was not obtained. After Mr. Dobb's return, in November, the plaintiff spoke to Mr. Dobb about his prospects of continuing in the firm's employment, and informed Mr. Dobb that as the P. R. contract was coming to an end he would like to make provision for other work. Mr. Dobb then said that he had plenty of work coming on and plaintiff need not worry. At the middle of December the plaintiff was put in charge of the Recreation Ground and Road contract. The value of it was $31,000. He had also after Mr. Dobb's return done some small work additional to the Plotting Room for the firm. Naturally as a result of having given satisfaction in the Plotting Room Contract, and having done these other small jobs, and having been put in charge at the end of December of the Recreation Ground and Road contract, in addition to the completion of the Plotting Room; and having been permitted by his employers to go and live at the Firm's mess and having already had discussion with Mr. Dobb as to the firm taking over his motor car the plaintiff believed and had good grounds for such belief that his offer to continue in the service of the defendant company had been accepted. It was never suggested to him that he was on trial and I can hardly believe that anything of the nature of a trial was in the mind of Mr. Dobb for the latter and Mr. Brucker had ample opportunity from May to December of considering the suitability of the plaintiff for the firm's class of work.

Mr. Dobb's view of the matter is that he gave plaintiff to understand that the plaintiff's continuance in employment would be on terms of showing suitability to handle the work which might be given to him. But this qualification was not conveyed to the plaintiff, and as Mr. Dobb admits that he placed the plaintiff in charge of the Recreation Ground and Road Contract I find that Mr. Dobb had in fact agreed to continue the employment of the plaintiff indefinitely. His words and conduct, in my opinion, could mean nothing less.

For reasons which for the moment are not material Mr. Dobb decided to terminate the employment and I have to determine what notice was reasonable. In this connection the plaintiff puts forward his qualifications, the character of the work he was doing, which is Civil Engineer's work, and the possibility of obtaining other employment. Then I have the evidence of Messrs. Davidson, Fancott and Jagger, three Secretaries of contracting companies. These three gentlemen speak as to the practice in their particular companies in engaging engineers or foremen locally. From their evidence, it appears that their practice is to have it definitely understood at the time of such engagements that they are subject to a month's notice either side and that this term is usually expressed in writing. Mr. Fancott also stated that one local engineer had been employed on agreement with three months' notice. Then I have Mr. Church of the Singapore Improvement Trust who states, in respect of a class of persons: Europeans who have been in the country some years, usually as planters, and who have drifted into the building trade and have been employed by the Trust in supervising labour on excavation and levelling of building sites and checking materials; that such persons are given a letter of appointment saying nothing about notice but in practice they give or accept a month's notice. Mr. Church's evidence does not help me much with regard to what is reasonable with a man with qualifications and the other evidence, though showing what people are prepared to agree to upon engagement, does not necessarily compel me to assume that the same notice will be reasonable when no agreement as to notice has in fact been made. The evidence of these four gentlemen does not establish a custom and it cannot be said that the parties to this action contracted with any custom in view. Mr. Dobb says that one month is reasonable and, from his point of view, he having another qualified engineer on his staff with whom he could and did replace the plaintiff, a month no doubt seems reasonable. Mr. Dobb also states that having regard to the uncertainty of a general contractor's business a month is reasonable. But Mr. Dobb has a number of persons on his staff, master craftsmen for example, engaged abroad on written agreements providing for three months' notice. The plaintiff on the other hand, says that when a mine in which he was engaged was about to close down he was given 5 months' notice. Certainly the evidence does not establish a custom, but I must give due weight to it in considering what is reasonable notice.

There are two locally reported cases, viz: *Aldworth* v. *Frampton*, 1 F.M.S.L.R. 235 in which it was held that for a rubber estate manager—a very small estate according to the report—engaged indefinitely on $250 a month, plus a bungalow, a coolies allowance and a minimum commission of $600 a year, three months' notice was reasonable. Also in *High Street Provision Store Ltd.* v. *Oliveiro*, (1930) S.S.L.R. 210, it was held that two months was reasonable for the book-keeper who had become Secretary of the company on a salary of $175 per month. As Murison C.J. said in that case "the law in the Colony upon this matter is that each case stands on its own facts: that what the Judge in each case thinks is reasonable notice is the notice to be given." Accordingly, having regard to all the facts, including the facts that the employer is a

general contractor, that the plaintiff has been locally engaged, and had, in a former employment as superintendent of a Quarry been engaged on a written contract with a month's notice, I nevertheless think that, having regard to his professional standing and the nature of the work, he is entitled to three months' notice.

I note in passing that the professional qualifications of the plaintiff were attacked, but on the evidence I do not think that attack was in the least successful.

The other cause of action is a libel contained in a letter written by the defendant company to the plaintiff's solicitor on the 25th February. There are two issues remaining for decision viz: whether the defamatory words are true in substance and in fact and whether the occasion was privileged. I have already intimated that if the occasion was privileged such privilege extends to the publication to the defendants' servants. The plea of justification is based on an extremely literal view of the words used. It is submitted that because letters were written by the R. E. on the 15th and 20th January and on the 4th, 5th and 28th February there is nothing untrue in stating the reason why the letter of the 18th February was written. The letter of the 28th February can have nothing to do *prima facie* with a reason for a letter on the 18th February. That letter was in these terms: "Please hand over all information and documents you have in connection with the above contracts to Mr. Brady. I require everything to be in order by the 26th instant." On the 25th January the plaintiff, as a result of the acrimony arising out of the motor car dispute, had received a letter from Mr. Dobb telling him "it is better for you to seek employment elsewhere. So if you will be ready to hand over work you have in hand to Mr. Brady, your salary can be drawn up to the end of February." In reply to which he had written on the 26th January that he accepted Mr. Dobb's motor car proposal coupled with a reduction of salary. After that there had been an inspection of the Recreation Ground Contract by Mr. Dobb, the plaintiff and the sub-contractor for the work about the middle of February; and whatever can be said of the events of that day Mr. Dobb did not then suggest to the plaintiff that the motor car affair had not been concluded by the letter of the 26th January. Consequently on receipt of a very curt order a few days later to hand over to Mr. Brady the plaintiff was in a quandary as to what Mr. Dobb's intentions were.

Whether the plaintiff was suitable or not, such letters as those of the 25th January and 18th February are not a fair way of dealing with an employee. And if Mr. Dobb had come in fact to the conclusion that the delay in the contract was due to the plaintiff, there was no reason why he should not have said so; especially if, as he says, the plaintiff was being employed on trial. My view of the matter is that Mr. Dobb was still feeling umbrage at the plaintiff having objected the proposal of cutting his salary, and that by his letter of the 18th February he was following up his proposal that the plaintiff should seek employment elsewhere in saying he wanted everything in order by the 26th February; but when faced with the solicitor's letter, he sought for an excuse and stated that the letter of the 25th January was an invitation to resign and that the reason for the 18th February letter was the continued complaints about the work which the plaintiff was superintending. In my opinion, that was not the reason for the letter. When the correspondence passing between Mr. Dobb and the R.E. and that between the plaintiff and Mr. Dobb is examined, the delay is shown to be due to causes over which the plaintiff had no direct control. The position of a supervising engineer *vis-a-vis* an independent sub-contractor is not the same as it is where the contractor employs labour directly. It appears, moreover, from the evidence that this sub-contractor was something more than a mere supplier of coolies. He had worked out the quantities. And Mr. Dobb is neither able to confirm nor deny that the sub-contract included the supply of materials.

To take the letters of complaint in their order, it appears that on 15th January the R.E. point out that one third of the contract time has passed and not one tenth of the work had been executed. It is marked "K. I. V. Gould 18.1.38." The plaintiff saw the letter and then wrote on 26.1.38 saying that there had been delay waiting for coolie lines which were finished on 1st January: there were continual changes of labour, but from the 15th there had been an average of 100 coolies a day, and more were promised after the Chinese New Year; and that the only answer to the letter of the R.E. of 15th January is that War Department pressed for us to sign the plans and start before we had time to look round, select a contractor etc.

Mr. Dobb, as far as the exhibited correspondence goes, makes no attempt to reply to the D.C.R.E. letter of 15th January, and on the 20th January the complaint is repeated by the C.R.E. On the 29th January Mr. Dobb replies to the C.R.E. that arrangements have been made to augment labour on this work. The dates should be noted for by the 26th the plaintiff had accepted the motor car proposal.

On the 4th February D.C.R.E. complains about the foreman. The plaintiff says the sub-contractor was the foreman. Major Price, the

D.C.R.E., has been called and says he did not intend to refer to the plaintiff. Mr. Dobb however says that the letter is a complaint about the plaintiff. I cannot accept his evidence on that point. On the 5th February D.C.R.E. writes again, referring to his letter 15th January and the letter of the C.R.E. of 20th January, and repeating his complaints of delay. The plaintiff writes to the head office on the 7th February. There are only 51 men and women on the Recreation Ground and 22 on the Road and that since signing the contract the contractor had changed the labour force six times (i.e. in little more than a month). On the 12th February he wrote again stating that the new arrivals for the Road had decamped, that it had happened three times and as the contractor was paying fair wages the cause was obscure; but there were now 37 on the Road.

A day or so later Mr. Dobb went to the job himself and saw the contractor and the plaintiff together. The plaintiff's account and that of Mr. Dobb are definitely opposed. On the whole I prefer that given by the plaintiff, and do not believe that the contractor was blaming the plaintiff for the delays for that is entirely contrary to the correspondence passing at the time.

Then there is an attempt by Mr. Dobb to show from his personal observations that the plaintiff was not exercising proper supervision. I need not go into it in detail. Major Price says that apart from the labour question his complaints were on minor matters. The fact that 200 feet of drain had to be taken up while producing a delay of a few days is not of major consequence when the fact is that the contract even now has extended much over the contract time under other supervision. Consequently, in my opinion, the plea of justification fails.

The question whether the occasion is privileged is one of difficulty. But after due consideration, I think, the statement though defamatory and not true was *prima facie* "made by the defendant in the conduct of his own affairs in a matter in which his own interest was concerned." (*Gatley*, Cap. XII). An enquiry was made by the plaintiff's solicitor as to what the defendant was intending by the letters of the 18th February and the 25th January, and the defendant was specifically asked whether he confirmed a statement made by another of his employees that plaintiff's services had been terminated. I have to consider whether the statement in the last paragraph of the defendants' letter is or is not wholly unconnected with the subject matter of the enquiry. If the statement is irrelevant to that subject matter, no privilege will attach to the publication of the statement. There is a case cited in the notes in *Gatley* p. 289 of which unfortunately a full report is unavailable, viz:—*Hanton* v. *Hatje*, (1907) 15 Sc. L.T. 535, where privilege was held to attach to a letter written by an employer stating his reasons for not complying with the demand of a solicitor for the payment of wages of a dismissed servant. The occasion is analogous to the one I am now considering.

The defendant's reply is not perhaps as apt and succinct as it might be, but rightly or wrongly he is setting out what he thinks are his rights in the matter viz: that he is entitled in any event to take the plaintiff off that particular contract and put an end to his services when the Plotting Room contract is finalised. It would, I think, be a restriction on the ordinary and necessary rights as to the free expression of opinion, if I were to hold that his statement of his reason was in the circumstances irrelevant or wholly unconnected with the subject matter of the enquiry. I hold therefore that the occasion was privileged.

The plaintiff, however, has not established that the defendant was actuated by any indirect or improper motive in writing the letter.

It is an inadvertent libel.

The defendant will therefore be entitled to judgment in the second cause of action.

As the plaintiff succeeds as to the first cause of action he is entitled to his costs on that cause and the defendant is entitled to the general costs on the libel cause of action but as the plaintiff succeeds on the issue of justification, he is entitled to have the costs of that issue taxed and paid to him. *Harnett* v. *Fisher*, (1927) 1 K.B. 402.

Direct Registrar to be guided by *Brown* v. *Houston*, (1901) 2 K.B. 855.

There will be judgment for the plaintiff for the sum of $1,000 and costs as above.

Judgment accordingly.

Solicitor for the plaintiff—

E. M. Tampoe Phillips.

Solicitors for the defendants—

Sisson & Delay.

[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

September 10, 1938.

REX v. SALIM BIN JA'AMAT.

[MALACCA CRIMINAL APPEAL No. 14 of 1938]

Malacca Lands Customary Rights—Registration in name of nominee of person not qualified to be a holder—Receipt by registered holder of rents and profits of land—Whether appropriation thereof criminal breach of trust.

Under the Malacca Lands Customary Rights Ordinance a piece of land at Sungei Baru Tengah was held by Khamis bin Mamat who mortgaged it to M.R.M.M. Ramasamy Chettiar. Subsequently it was sold and transferred to one Salim bin Ja'amat who really purchased